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10/062,303	02/01/2002	Carlo Proserpio	3318.1000-000	2558

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/062,303

Applicant(s)

PROSERPIO, CARLO

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 and 37-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 21-24 and 26-36 is/are rejected.
- 7) ☐ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

Acknowledgement is made of Applicant's IDSs entered 7 May 2002 and 17 December 2002.

### ***Election/Restrictions***

Applicant's election of Invention I in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The restriction is made final. Claims 13-20 and 37-48 are withdrawn from examination.

### ***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7 May 2002, paper no. 4, have been approved.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, 21,22, are rejected under 35 U.S.C. 102(b) as being anticipated by David et al. (EP 0733462 A1).

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As to Claim 1, David et al. discloses a plastic article (Figs. 1-5; “container” of abstract written in English) comprising a first plastic portion (2 of Figs. 2 and 5) having a series of protrusions (2d of Fig. 5) extending therefrom and adjacent to each other (see Fig. 5); and, a second plastic portion (3a and 3d of Fig. 5) molded between and over (shown in Fig. 5) the protrusions of the first plastic portion, thereby forming a protuberance (“protuberance” of Fig. 5) on the plastic article having a desired profile.

As to Claim 2, David et al. further disclose the protrusions extending from the first plastic portion as contoured (shown in Fig. 5) so as to provide a general approximation of the desired profile.

As to Claim 3, As to Claim 2, David et al. further disclose the protrusions having heights greater than thicknesses (shown in Fig. 5).

As to Claim 4, David et al. further disclose the article a container (abstract written in English) the first plastic portion being an inner container (2 of Fig. 5) and the second plastic portion being a outer container (3 of Fig. 4) molded over the inner container (abstract written in English).

As to Claim 5, David et al. further disclose the inner container including an inner pattern (2i of Fig. 4) formed thereon for supporting a corresponding outer pattern (2j of Fig. 4) on the outer container.

As to Claim 6, David et al. further disclose the protuberance forming an upper rim (shown in Figs. 4 and 5).

As to Claim 7, David et al. further disclose the container a flower pot (abstract written in English).

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As to Claim 9, David et al. further disclose the protrusions as horizontal fins (2d of Fig. 5).

As to Claims 21 and 22, David et al. discloses a plastic article (Figs. 1-5; "container" of abstract written in English) comprising a first plastic portion (2 of Figs. 2 and 5) made by injection molding (abstract written in English) having a series of protrusions (2d of Fig. 5) extending therefrom and adjacent to each other (see Fig. 5); and, a second plastic portion (3a and 3d of Fig. 5) molded between and over (shown in Fig. 5) the protrusions of the first plastic portion, thereby forming a protuberance ("protuberance" of Fig. 5) on the plastic article having a desired profile. The article of David et al. by inherently perform the method steps recited in Claims 21 and 22.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1) in view of Watson (GB 2173984 A).

As to Claim 8, the limitations of Claim 7 are disclosed as described above. Not disclosed is the inner container portion having a fluted sidewall. Watson, however, discloses a plant pot with an inner portion having a fluted sidewall (4 of Fig. 4). It would have been obvious to one of

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ordinary skill in the art at the time of the invention to modify the article of David et al. by making the sidewall of the inner portion fluted as disclosed by Watson so as to improve the load bearing capacity of the wall (see Watson at page 1 lines 124-127).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1).

As to Claim 10, the limitations of Claim 7 are disclosed as described above. Not disclosed is the protrusion with vertical fins. However, because vertical or horizontal fins were art-recognized equivalents at the time of the invention in those protrusions of injection molded articles where it is immaterial whether the fins are vertical or horizontal in shape, one of ordinary skill would have found it obvious to substitute vertical for horizontal fins in the article of David et al.

As to Claim 11, the limitations of Claim 7 are disclosed as described above. Not disclosed is the protrusion with zigzag fins. However, because vertical or horizontal fins were art-recognized equivalents at the time of the invention in those protrusions of injection molded articles where it is immaterial whether the fins are vertical or horizontal in shape, one of ordinary skill would have found it obvious to substitute zigzag for horizontal fins in the article of David et al.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1) in view of Hsia (US 5,765,922).

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As to Claim 12, the limitations of Claim 1 are disclosed as described above. Not disclosed is the protuberance on a chair. Hsia, however, discloses the plastic portions making up a chair (Figs. 1 and 2; col. 3 lines 4-6). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of David et al. by making it a chair as disclosed by Hsia so as to reduce weight in the chair (see Hsia at col. 3 lines 4-6).

Claims 23, 24, 26-31, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1) in view of Shimizu et al. (US 6,071,454).

As to Claim 23, the limitations of Claim 22 are disclosed as described above. Not disclosed is the use of injection molding for the second plastic portion. Shimizu et al., however, discloses the use of injection molding for a second plastic portion (col. 4 lines 52-56). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of David et al. by using injection molding for the second plastic portion as disclosed by Shimizu et al. depending upon ease of manufacturing and available resources.

As to Claim 24, David et al. as modified by Shimizu et al. further disclose a second mold (Shimizu et al. at col. 2 lines 42-45).

As to Claim 26, David et al. as modified by Shimizu et al. further disclose contouring the protrusions so as to provide a general approximation of the desired profile (see Figs. 4 and 5).

As to Claim 27, As to Claim 2, David et al. as modified by Shimizu et al. further disclose the protrusions having heights greater than thicknesses (shown in Fig. 5).

As to Claim 28, David et al. as modified by Shimizu et al. further disclose the article a container (abstract written in English) and form the first plastic portion as an inner container (2

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of Fig. 5) and the second plastic portion as an outer container (3 of Fig. 4) molded over the inner container (abstract written in English).

As to Claim 29, David et al. as modified by Shimizu et al. further disclose forming an inner container including an inner pattern (2i of Fig. 4) formed thereon for supporting a corresponding outer pattern (2j of Fig. 4) on the outer container.

As to Claim 30, David et al. as modified by Shimizu et al. further disclose forming the protuberance into an upper rim (shown in Figs. 4 and 5).

As to Claim 31, David et al. as modified by Shimizu et al. further disclose forming the container into a flower pot (abstract written in English).

As to Claim 33, David et al. further disclose forming the protrusions into horizontal fins (2d of Fig. 5).

As to Claim 34, the limitations of Claim 31 are disclosed as described above. Not disclosed is the protrusion with vertical fins. However, because vertical or horizontal fins were art-recognized equivalents at the time of the invention in those protrusions of injection molded articles where it is immaterial whether the fins are vertical or horizontal in shape, one of ordinary skill would have found it obvious to substitute vertical for horizontal fins in the article of David et al.

As to Claim 35, the limitations of Claim 31 are disclosed as described above. Not disclosed is the protrusion with zigzag fins. However, because vertical or horizontal fins were art-recognized equivalents at the time of the invention in those protrusions of injection molded articles where it is immaterial whether the fins are vertical or horizontal in shape, one of ordinary



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skill would have found it obvious to substitute zigzag for horizontal fins in the article of David et al.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1) in view of Shimizu et al. (US 6,071,454) in further view of Watson (GB 2173984 A).

As to Claim 32, the limitations of Claim 31 are disclosed as described above. Not disclosed is the inner container portion having a fluted sidewall. Watson, however, discloses a plant pot with an inner portion having a fluted sidewall (4 of Fig. 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of David et al. by making the sidewall of the inner portion fluted as disclosed by Watson so as to improve the load bearing capacity of the wall (see Watson at page 1 lines 124-127)..

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (EP 0733462 A1) in view of Shimizu et al. (US 6,071,454) in further view of Hsia (US 5,765,922).

As to Claim 36, the limitations of Claim 23 are disclosed as described above. Not disclosed is the protuberance on a chair. Hsia, however, discloses the plastic portions making up a chair (Figs. 1 and 2; col. 3 lines 4-6). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of David et al. by making it a chair as disclosed by Hsia so as to reduce weight in the chair (see Hsia at col. 3 lines 4-6)..

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*Allowable Subject Matter*

Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

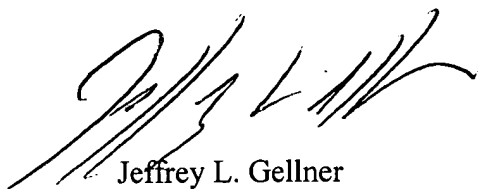
*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Valyi, Masutani, and Shima disclose in the prior art various injection molded articles. Roberts ('747) and Roberts ('729) disclose in the prior art various molded plant pots. Levey and Smith disclose in the prior art various vertical fins. US203/0014912 A1 is Applicant's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', is written over the printed name.

Jeffrey L. Gellner